



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-0638]

RIN 1625-AA09

Drawbridge Operation Regulation; Passaic River, Kearny and Newark, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily modify the operating schedule that governs the Route 1 & 9 (Lincoln Highway) Bridge across the Passaic River, mile 1.8, between Kearney and Newark, New Jersey. The bridge owner, New Jersey Department of Transportation, submitted a request to restrict bridge openings during the morning and afternoon rush hour periods to alleviate traffic congestion resulting from area roadway closures. It is expected that this change to the regulations would provide relief to vehicular traffic while continuing to meet the reasonable needs of navigation.

DATES: Comments and related material must be received by the Coast Guard on or before *[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: You may submit comments identified by docket

number USCG-2013-0638 using any one of the following methods:

(1) Federal Rulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Joe Arca, Project Officer, First Coast Guard District Bridge Program, telephone 212-668-7165, e-mail joe.m.arca@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Tables of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2013-0638), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered

received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number USCG-2013-0638 in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number (USCG-2013-0638) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and

place announced by a later notice in the Federal Register.

B. Basis and Purpose

The Route 1 & 9 (Lincoln Highway) Bridge at mile 1.8, across the Passaic River between Kearney and Newark, New Jersey, has a vertical clearance of 40 feet at mean high water and 45 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.739(b).

The waterway users are recreational and commercial vessels.

The owner of the bridge, New Jersey Department of Transportation, submitted a request to the Coast Guard to temporarily change the drawbridge operating regulations.

The purpose of this temporary rule is to help provide relief by reducing vehicular traffic congestion during the morning and afternoon vehicular rush hour periods due to local construction detours. Vehicular traffic will be detoured from the adjacent Pulaski Skyway Bridge to the Route 1 & 9 Bridge (Lincoln Highway) Bridge for two years commencing on March 1, 2014 and continuing through March 1, 2016, while the Pulaski Skyway Bridge is under construction to replace its deck.

The existing regulations require the Route 1 & 9 (Lincoln Highway) Bridge to open on signal at all times provided a four hour advance notice is given.

Under this proposed temporary rule, the draw would open on signal provided a four hour advance notice is given; except that, the draw need not open for the passage of vessel traffic between 6 a.m. and 10 a.m. and 2 p.m. and 6 p.m., Monday through Friday, except holidays. Tide dependent deep draft vessels may request bridge openings during the two rush hour closure periods provided at least a twelve hour advance notice is given by calling the number posted at the bridge.

C. Discussion of Proposed Rule

The Coast Guard proposes to suspend the drawbridge operation regulations at 33 CFR 117.739(b) until March 1, 2016. The Coast Guard proposes to temporarily add paragraph (p) to section 117.739 to allow the bridge owner to keep the Route 1 & 9 (Lincoln Highway) Bridge in the closed position during the morning and afternoon rush hour periods between 6 a.m. and 10 a.m. and 2 p.m. and 6 p.m., Monday through Friday, except holidays, to facilitate additional vehicular traffic detoured from the Pulaski Skyway Bridge which will be under construction from March 1, 2014 through March 1, 2016.

Tide dependent deep draft vessels would be able to request bridges openings during the rush hour closed periods provided at least a twelve hour advance notice is given by calling the number posted at the bridge.

Based on the above information, the Coast Guard believes it is reasonable to allow the Route 1 & 9 (Lincoln Highway) Bridge to remain in the closed position during the morning and afternoon rush hours to facilitate additional vehicular traffic detoured during the two year bridge deck replacement project at the Pulaski Skyway Bridge from March 1, 2014 through March 1, 2016.

The twelve hour advance notice requirement for bridge openings during the rush hour periods gives mariners ample time to plan and optimize their transits through the waterway and also gives the bridge owner the opportunity to alert commuters of any expected delays caused by pending bridge openings.

If the Route 1 & 9 Bridge opened frequently for vessel traffic during the morning and afternoon rush hours, given the additional detoured vehicular traffic, it likely would result in significant vehicular traffic delays that could impact the ability for emergency vehicles to respond to emergency situations.

D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866, or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We believe that this rule is not a significant regulatory action because the bridge provides adequate clearance for recreational vessels to transit the bridge in the closed position and the commercial vessels will be able to request openings between 6 p.m. and 6 a.m. and again, from 10 a.m. until 2 p.m. provided the requisite advance notice is given by calling the number posted at the bridge. Additionally, commercial deep draft vessel traffic may request bridge openings during the closure periods if at least a twelve hour advance notice is given.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit through the bridge between 6 a.m. and 10 a.m. or between 2 p.m. and 6 p.m.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons: The high vertical clearance of 40 feet at mean high water should accommodate all present vessel traffic except deep draft. The bridge will continue to open on signal for commercial deep draft vessel traffic provided at least a twelve hour advance

notice is given. Additionally, all other vessels can transit the bridge between 6 p.m. and 6 a.m. and again, from 10 a.m. until 2 p.m. provided the requisite amount of notice is given.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection

of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government,

in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01, and Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that

this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of significant environmental impact from the proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. From March 1, 2014 until March 1, 2016, suspend § 117.739(b) and add a new temporary paragraph (p) to read as follows:

§ 117.739 Passaic River.

* * * * *

(p) The draw of the Route 1 & 9 (Lincoln Highway) Bridge, mile 1.8, between Kearny and Newark, shall open on signal if at least a four hour advance notice is given, except that, the draw need not open for the passage of vessel traffic between 6 a.m. and 10 a.m. and between 2 p.m. and 6 p.m., Monday through Friday, except holidays. Tide dependent deep draft vessels may request bridge openings between 6 a.m. and 10 a.m. and between 2 p.m. and 6 p.m. provided at least a twelve hour advance notice is given by calling the number posted at the bridge.

* * * * *

Dated: August 7, 2013

D.B. Abel
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District

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